

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

BEDNARIK *et al.*

Appl. No. 08/917,710

Filed: August 26, 1997

For: **Soluble Interleukin-1 Receptor
Accessory Molecule**

Art Unit: 1646

Examiner: Draper, G.

Atty. Docket: 1488.0450001

Election and Reply with Traverse Under 37 C.F.R. § 1.143

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated June 22, 1998, applicants provisionally elect, *with traverse*, Group I represented by claims 1-10 and 16 for further prosecution. Applicants reserve the right to file one or more divisional applications directed to the non-elected inventions should the restriction requirement be made final. Accompanying this reply is a preliminary amendment.

Remarks

Applicants respectfully traverse the restriction requirement as it applies to Groups I and II. It is the Examiner's position that nucleic acids and the encoded protein are patentably distinct molecules because the product as claimed "can be made by a materially different method."

However, even where two patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of both groups would entail a "serious burden" (*see* MPEP § 803). In the present situation, the examiner has clearly failed to make such a showing. Indeed, no arguments have been made